



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, FIELD COLLECTION AREA OPERATIONS
DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Rocco Steco /s/ *Rocco Steco*
Acting Director, Collection Policy

SUBJECT: Reissuance of Collection Procedures for Assessed Restitution

This memorandum reissues interim guidance (IG) dated July 10, 2013, control number SBSE-05-0713-0044, titled *Collection Procedures for Assessed Restitution*. This memo provides guidance for Collection employees working Federal restitution cases. This guidance supplements the procedures found in IRM 5.1.5, *Balancing Civil and Criminal Cases*, and will be incorporated into the next revision.

Background

Following the conviction of a defendant for a Federal criminal tax violation or tax-related offense, the court may order the defendant to comply with certain tax-related conditions of probation or supervised release, and/or order the payment of restitution to the IRS. The Firearms Excise Tax Improvement Act of 2010 ("the FETI Act") amended IRC §6201(a)(4) to provide for the assessment and collection of the amount of restitution ordered in a Federal criminal case for failure to pay any tax under Title 26. The law applies to restitution orders entered after August 16, 2010. The new IRM 25.26.1, *Criminal Restitution and Restitution-Based Assessments*, provides a Servicewide overview and functional responsibilities.

Impact

Prior to enactment, the Service could not assess or take administrative action to collect an assessed or assessable amount of restitution. The FETI Act provides that the assessed amount of restitution can be collected as if it were a tax. The restitution order, however, does not cease to exist, and the Department of Justice (DOJ) retains its authority to collect under Title 18. The legislation provides non-exclusive, parallel means by which the amount of restitution may be satisfied: DOJ's ability to enforce the restitution order and the Service's administrative ability to collect the assessment based upon the amount ordered as restitution.

Criminal restitution and civil tax liability are separate and distinct. The assessment of restitution under section 6201(a)(4) is not itself a determination of the actual civil tax liability for the tax period for which restitution was ordered, and is assessed only "as if such amount were such tax." Although criminal restitution and civil tax liability are distinct, the Service may not collect both for the same period because this would be impermissible double collection. Any payments made to satisfy the restitution-based assessment must also be applied by the Service to satisfy the related civil tax liability for the same tax period. Such application of payments is made possible due to a mirror assessment of restitution order and ultimate civil liability for the same period.

Exam will assess restitution on MFT 31 with a Transaction Code (TC) 290. The module will contain a TC 971 with Action Code 102 and a TC 971 with Action Codes 180-189. Exam will issue Notice and Demand, Letter 4885, and if the taxpayer refuses or neglects to pay, the statutory lien arises. Once the restitution is assessed the ten-year statute of limitation applies. Exam will notify Collection Advisory when a restitution-based assessment is made.

Assessed restitution modules will generally not be issued systemically to Field Area Collection. A STAUP in the module will temporarily suppress notices and suspend the module. This suspense allows time for coordination of civil and criminal aspects of the case prior to any collection activity.

Collection Procedures

Advisory receives notification from Criminal Investigation (CI) when the court orders IRS-related conditions of probation including restitution. Advisors monitor the case for compliance with these conditions and determine what civil actions are to be taken on the case. Civil actions on probation cases will depend on what conditions were included in the court order, whether assessments have been made, and the collection potential given the taxpayer's circumstances. Advisors will generally request a Collection Field Area investigation when there are assessed liabilities by issuing an Other Investigation (OI) to the appropriate Field Area group. The OI should contain information regarding the court order, compliance, collectability, and any other pertinent information necessary for the revenue officer (RO) to conduct the investigation. (See IRM 5.1.5.15 and 5.1.5.16.) Effective June 2, 2014, a new centralized probation and restitution unit in Dallas, TX, will

be responsible for probation and restitution Advisory work. The unit may be reached through its dedicated e-fax number, (855) 843-3038, and email address, *SBSE EEF Dallas Restitution.

Assignment to Field Areas - ROs are assigned OIs in probation cases when liabilities are assessed that may be collected by administrative collection actions. When the Field Area group receives an OI requesting an investigation where restitution has been assessed, the group will accelerate the case, including related modules, to status 26. To place the modules in status 26, STAUP 2200 must be requested on IDRS at the same time as the request for T-Sign. Once assigned, the Field Area group will close the OI issued by Advisory and work the bal due restitution modules(s) (and any related modules) according to the instructions on the OI. The RO group will not close the Non-Field OI (NF OI) for monitoring of probation.

In some circumstances, a restitution-based bal due may be assigned systemically to the Field. ROs receiving these cases should contact Dallas Advisory. If the Advisor has an open probation case there will be a NF OI 182 (Probation) open on the Integrated Collection System (ICS). The Advisor will be familiar with the conditions set forth in the court order and can advise the RO regarding whether collection actions should be coordinated with the DOJ. If the probation case has been closed, the Advisor should assist the RO in determining whether the DOJ is taking any actions to enforce its restitution judgment, and whether any planned administrative actions would be appropriate under the circumstances.

Administrative Collection - Restitution modules assigned to ROs will generally be worked in the same manner as other bal due cases. Actions taken to resolve the case may include filing a notice of federal tax lien (NFTL), levy, seizure, installment agreement (IA), offer in compromise (OIC), or classifying the case as currently not collectible (CNC). Which actions are appropriate will depend on the court order and other factors. Neither the existence of a court ordered payment plan nor the taxpayer's timely payments to the court preclude the Service from administrative collection of restitution-based assessments.

Exception: When a court orders restitution paid to federal as well as nonfederal victims, the Service will not pursue enforced collection actions until the nonfederal victims are paid in full. In those instances, the account may be closed as a CNC hardship with a mandatory follow-up date based on information contained in the court order. The government may take steps to protect its interest, such as filing a NFTL.

Coordination with the DOJ - Because the DOJ retains its ability to enforce the restitution order while the Service has a parallel ability to collect administratively, communication with the DOJ is important prior to taking enforcement action to collect restitution-based assessments. Compliance with the conditions of probation and a court order to pay restitution and collectability of such amounts must be provided to the Financial Litigation Unit (FLU) of the appropriate U.S. Attorney's office. The Advisor will be familiar with the court order and conditions of probation and should be contacted by the RO for guidance

on how to coordinate with the local FLU. The Advisor will be able to advise the RO regarding appropriate actions to take and will facilitate coordination and communication with CI, the U.S. Probation Officer, and the DOJ when necessary.

NFTL - Current procedures for NFTL filing determinations will apply to restitution balance due modules; however, NFTLs for these assessments must be manually prepared. Procedures for manual preparation of these NFTLs are found in IRM 5.12.7.

Installment Agreements - The Service may enter into IAs to collect a restitution-based assessment. The agreement must provide for the full payment of the restitution-based assessment. IAs for other civil assessments may be entered into when the agreement won't result in full payment of the restitution-based assessment. The agreement cannot in any way compromise or reduce the amount of the restitution ordered by the court. Any changes to the terms of the court ordered payment schedule must be made by the court. To be legally sufficient, the entire amount of the restitution ordered must be satisfied at the conclusion of the IA, and the periodic amount and frequency of payments of an IA should be no less than that set in the court's payment plan. Procedures for issuing IAs in restitution cases are found in IG SBSE-05-0314-0014, *Interim Guidance on Establishing Installment Agreements on Restitution-Based Assessments and Related Civil Assessments* and will be incorporated into IRM 5.14.4.

Offers in Compromise - The Service cannot accept an offer in compromise that includes a civil assessment based on a restitution order unless the taxpayer has paid or will pay the full amount of the restitution as part of the offer. Additional guidance on OIC in restitution cases has been published in IRM 5.8.4.

Appeals - The taxpayer is entitled to Collection Due Process rights but may not challenge the underlying liability upon which the restitution is based.

Bankruptcy - If a taxpayer is in bankruptcy, contact the Centralized Insolvency Operation (CIO). Procedures for bankruptcy can be found in IG Memorandum SBSE-05-0114-0005, *Procedures for Processing Bankruptcy Cases with Restitution Assessments*, and will be incorporated into IRM 5.9.

Campus Collection - Restitution cases will not be worked by Campus employees. Advisors receiving contacts from Field Area or Campus Collection employees about restitution modules or related assessments should issue an OI to the appropriate Field Area group with instruction to assign all modules for the taxpayer if the case is not already assigned to the Field Area.

Payments - Payments received by Collection Field Areas will be posted using established designated payment codes (DPC). Payments received as a result of collection enforcement action may be applied in the government's best interest. Court ordered restitution payments made to the Clerk of the Court will continue to be sent by the Court to Kansas City Submission Processing where they will be posted using a DPC 26. SBSE Campus Compliances Services will cross-reference payments and credits and reconcile

accounts to ensure the restitution-based assessment and possible duplicate civil liabilities are only collected once. Additional information about cross-referencing payments is found in IRM 5.19.23, *Restitution-Based Assessments Processing*.

Closures - Restitution modules may be closed CNC due to hardship. Court ordered restitution payments are allowable expenses. Do not close restitution modules unable to contact or unable to locate if there is an open probation NF OI in Advisory. If the taxpayer cannot be located or contacted, the RO should follow guidance in IRM 5.1.5 for reporting noncompliance with conditions of probation. If the taxpayer has fulfilled all conditions of probation and release, and cannot be located or contacted, the RO can request through the group manager that the "restitution" program name be removed on ICS to allow the closure.

If you have questions, please contact me, or a member of your staff may contact Collection Policy Senior Program Analyst Denise H. Rosenberg. Advisory employees should direct questions through established channels to Advisory & Insolvency Senior Program Analyst Wallace B. Schneidau.

cc: Director, Field Collection
Director, Campus Compliance Services
Director, Filing and Payment Compliance
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